

**SEDGWICK COUNTY
BOARD OF ZONING APPEALS
MINUTES**

February 1, 1999

The regular meeting of the Sedgwick County Board of Zoning Appeals was held at 3:30 p.m. on February 1, 1999, in the County Commission Room, 3rd Floor, Sedgwick County Courthouse, 525 N. Main, Wichita, Kansas.

The following members were in attendance: Chairman, GARY WILEY; PAM BAUER; JANA MULLEN and GRANT TIDEMANN.

The following Planning Department staff members were in attendance: Assistant Secretary, David L. Yearout, and Recording Secretary, Rose Simmering.

Also present were Glen Wiltse, County Zoning Administrator, George J. Bloesing, County Code Enforcement and Michelle Daise County Legal, Roger D. Hughey, Attorney for County Board of Zoning Appeals.

WILEY: The first case to be heard is CoBza 5-98. I must ask staff and the public present here today that there is a conflict of interest in my hearing this case. My property is butting up to some of the property that is being heard today in this case. Does anyone have any objections to my staying on the bench for this case? Seeing no objection we shall begin.

YEAROUT: Presented staff report. There is another property that this applicant owns in another location in the county, there is another appeal being made on it as well. Same issue just a different property. It was originally scheduled for today however, we failed to get the legal notice in the paper in sufficient time. It is tentatively scheduled for the March 1, 1999.

WILEY: That case number is CoBza 7-98?

YEAROUT: Yes sir. This case COBZA 5-98 is regarding the property on 87th Street South. You should have in your packet copies of information submitted by the applicant. Including the letter from the Director of Code Enforcement Office of his decision regarding that.

WILEY: Nobody got that.

YEAROUT: We will get additional copies made and provide them to you. As well as, the rationale why he is feeling this way. If you wish to proceed I can go get copies and

provide them to you.

WILEY: That would probably be wise.

YEAROUT: Do you want to go ahead and hear from the applicant?

WILEY: Do we need to hear from Glenn first or the applicant?

YEAROUT: Procedurally, probably the applicant first.

HUGHEY: The applicant has burden of prove.

WILEY: We need to swear in anybody that intends to speak at today's hearing. Would those stand that intend to speak.

WILEY: Hold up your right hand.

AUDIENCE: Does that included the Public Advocates?

WILEY: Yes.

WILEY: Do you solemnly swear to give your names please, that you will tell the whole truth, nothing but the truth, so help you God?

AUDIENCE: I do.

APPLICANT ROY E SHELINBARGER: Good afternoon. I am the owner of the property at 1321 W. 87th Street South. The purpose of this appeal is essentially to challenge the Administrator's position that the Section 1 of the zoning code associated with the agriculture exemption does not apply. I believe the "Administrative Interpretation" that was provided in the letter that you should get a copy of here shortly, is in error. Because the location and use of the property qualifies it for agriculture exemption as provided for in Article 1, the general provision of the Wichita-Sedgwick County Unified Zoning Code. And by the definition of "agriculture" in Article 2 under Rules Of Construction and definitions and agricultural exemptions, clearly states, "this code shall not apply within the unincorporated area of the county to the use of land for agriculture proposes or to the erection or maintenance of building thereon; provided that such buildings and land are used for agricultural purposes. Residential uses that are accessory to agricultural uses shall be considered agriculture in nature for purposes of this exemption and farm residences shall thus be exempted from the requirements of this code." I believe as the code is written, the exemption does not allow the Zoning Administrator to apply the code to the property in question. And when I say the application of the code, it is the determination that the keeping of inoperable vehicles or the existence of inoperable vehicles on the property are citable under the

code. The Zoning Administrator's letter of November 12, 1999, that hopefully you will get a copy of, acknowledges the existence of the agricultural exemption. But, does not specifically say that the exemption does or does not apply. I think that is a critical decision in the process that you have to go through. You have to ask yourself one question. Does the agriculture exemption apply or does it not? If it does apply, then, as the code is written under general provision, then the code can not apply to the property in question. That is a very critical branch in that decision process. The letter from the Zoning Administrator simply implies, Article 2 definition in an attempt to apply the code regardless of the exemptions existence. If the exemption applies, applications of the code are in direct conflict with the code exemption. You also have to ask yourself, does the applications of the code by the Zoning Administrator require review of the historical use of the property prior to the adoption of zoning in county? I believe that is provided for in Article 7 Section A-3. It is my position, and hope to be able to show, that the current use of the property predates the zoning ordinances and prior code associated with the property. Even though the burden of proof is on me to show that the Administrator's interpretation is incorrect, I believe I can show that. There are some other case law issues that require not only this Board but the Administrator to liberally construe the agricultural exemption broadly in favor of the property owner. I believe, it is the case law that I am citing is COBBLE vs THE CITY OF FAIRWAY citation 189 KS 710 OF 1962. That essentially established that zoning regulations should be broadly construed in favor of property owners. In this case, I do not believe that the Zoning Administrator has broadly construed the application of the code in my favor. I believe the code is based on two statutes, Kansas statute annotated 12-758A, where zoning regulations shall not apply to existing uses of building or land. I am prepared to show, that essentially, the use of this land has not changed since 1971. There is a mobile home on the property, but, is basically taxed as personal property. It is not affixed to the property. Also, KSA 12-758B is what establishes the agriculture exemption. There are no known exemptions filed with the Registrar Of Deeds on this property. There are not any covenants or anything else that restrict my use of the property. I purchased it in 1971. I would like to discuss the use of the property. My father and myself bought this property in October 1971. He made the down payment because I was young and inexperienced, and was employed but not making a lot of money. He was a farmer. The deal was he made the down payment and I made the payments. It was bought on land contract over a ten year period. I had a mobile home that I had lived in, and that was moved on the property. The property was purchased and it was set up for mobile home use. Both my father and myself, had livestock in a leased acreage over between Derby and Mulvane, on Greenwich Road. During that time, the use of the property was such that horses and various animals, and when I say during that time, this was up until 1983. Horses and animals were kept on the property. Animals, I mean, cattle. The lease-hold essentially was lost on the property on Greenwich Road. A lot of the livestock was moved at a 155 acre farm in Missouri. This particular piece of property, the 87th Street property was used kind of as a staging area. There were horses kept there. My father essentially maintained his residence in Sedgwick County. I lived there, and also did various truck farming activities associated with raising fairly large gardens. For things like raising of cantaloupe and the typical things that occur out in

the County on relatively small pieces of property. In 1979, I moved away from the property and basically it was unoccupied from 1979 to 1985, as far as, residential purposes go. The storage of machinery for agriculture purposes this property has I believe. Based on the appraisers statement, there is a barn on the property, a 40 X 40, and there is a 14 X 18 outbuilding and a 16 X 30 barn. The 40 X 40 and the 16 X 30 are all continuous, they are closey attached. Various kinds of 3 point equipment, plows, disc, bushhogs, outside of the building. There is a terrace plow outside the building. You will see the Administrator's pictures if they present any. There will be pictures of trailers, in addition to the vehicles, that are considered unacceptable by the Administrator. When I moved, in 1979, my father died in 1983, in the period we used the property. We still had horses until approximately 1983. When he died the horses were sold. The property was essentially used for truck farming type operations or operations associated with gardening. I am talking about, not just a small patch of gardening, this is a pretty good size of patch. In 1985, my mother began living in the mobile home. It was prepared and she moved in. Essentially, I discovered through various events that it was better to have someone on the property so you could keep things tied down. The property since that time has essentially been used for storing agricultural machinery. For activity both on that property and from the period of 1988 up until 1996 I was married, My wife had a small 25 acre farm south of Winfield. Machinery was shuttled back and forth and various wood cutting machinery. We used this property for storing of that machinery, plus, whatever wood would be hauled and stored in the facility. From 1985 to the present my mother has lived there. She has maintained her residence on the property and I have used the property for various things as recently as, two years ago. I do not know the exact dates, but, the property was totally re-fenced. The original fence that came with the property had short woven wire fencing with about two strands of barb-wired, two or three strands on top with pent-a-treated post. Those post were rotted, they had been replaced by some steel post on a repair basis and required bases. A couple years back, my guess is three or four, I had contracted with a fence builder. My neighbors were going through a lot of trouble to repair them. I contracted with a fence builder and we tore the fence out. All the corner posts were reset with hedge type post, four foot type, woven wire was installed, your standard red brand out of Payless Cashways. One strand of barb-wire was put on top on that and then heavy duty T - post were spaced out in between. After that time, an agreement between myself and the fence contractor had a arrangement. I agreed to allow him to use the property to range approximately 20 goats. It was an experiment. I believe I have an article. It turns out that goats eat weeds. Goats do not eat grass. If you are trying to restore a pasture that has been overgrazed, which this was because it was fairly. If you are familiar with the area out there, you will notice that some of the property has horses on it and it turns into a dry lot pretty fast. One of the activities, I have an article from the August 23, 1998, Wichita Eagle that researches at Emporia State. Experimenting with goats in weed control tests. On some property by Melvin Lake to control something called ><. What I did. I allowed this gentlemen, he had about 20 goats on there for several months. At least three and it was generally one spring and one summer. They prevented weeds to go to seed, That fall, or the following spring I did an open burn on the property to clear out whatever dead fescue

was there. The property as you observe it today is a pasture. The pasture ground is thick and generally and basically pretty high. It is a fescue type grass. I do not know if I can provide some pictures, hopefully, it is appropriate. Away from microphone--What you may see from the Administrator, is where they come up and focus on the offensive stuff. But I would like to present something that shows what <Away from microphones> Applicant is showing pictures to the Board. This picture, is a picture looking from the road right down the fence line on the east side looking towards the and for talking purposes, I have two picture of the offensive vehicles. The reason I want to show you those and maybe the Administrator's picture are better. One picture is of a 1955 GMC pickup it has a tag on it that is dated 1972. It has been there since 1972. This is a picture of the other two vehicles, the tag date on one of the cars is 1977. That brings it up to date. The property currently is used for storing agriculture machinery in the corrugated metal pole type barn facility. There are various implement trailers that are around that building and some agriculture machinery, as well as, the vehicles. The initial point is the first yes, no question that you have to get through in my opinion. Does the agriculture exemption apply? Does the use of this property pre-date the code such that it would fall under the nonconforming use. That code reads in Article 1 under the general provisions non-conformity created by adoption of this code, that is the title says "No use of a building structural property and no building structural property that complied with the zoning ordinances or zoning resolution in effect prior to March 25, 1996, shall become or deemed to have become non-conforming or non-complying to the adoption of this code." I have heard the zoning regulations in the county go back to 1985 but I would submit that is not back far enough. I am saying that if there is some other thing that made this activity illegal prior to 1985. It certainly was not enforced. I am not aware of any code that would apply. I have reviewed the land and building history. It is my position that the Administrator's Interpretation that vehicle storage is a code application and if the code does not apply then vehicle storage has to be prescribed by some other means other than the application of the code. Now, we get down to what I am asking for. It is my understanding per Kansas statue 12-759 E "When deemed necessary by the Board of Zoning Appeals, the Board may grant variances and exceptions from the zoning regulations on the bases and in the manner herein provided." I will give you copies of what I am reading here and my recommendations for motions. What I am asking for is an exception not a variance. The exception you get down to that part of the code that covers exceptions it says, "To grant exceptions to the provision of the zoning regulations in those instances where the Board is specifically authorized to grant such exceptions." I believe you are authorized to do that based on KSA-12-758 and 12-758B as well as the zoning code itself. Only under the terms under the zoning regulation. I am asking you to interpret the zoning regulations in this fashion wherein; Article 1 the general provisions, the agriculture exemption exist, therefore, that is provided for in the zoning regulation and therefore you can in fact appropriately apply the exemption to this property. In no event shall exceptions to the provisions of the zoning regulations be granted where the use or exceptions contemplated as not specifically listed as an exception in the zoning regulations. I have pointed out the place where it is used or it is listed. Under no conditions, shall the BZA have power to grant an exception when the conditions of the

exceptions as established in the zoning regulations by the governing body, are not found to be present. My understanding is, it has to be used for agricultural purposes, it has to have a history, there has to be some activity associated with agricultural purposes and that is what I have tried to relay. I have shown the conditions are present and have been present for some time. Also, even if you get through that gate and you say agriculture exemption does not apply. You still have to ask the question, Is the use of the property non-conforming as is? Does the use of the property pre-date the code itself? And therefore can not be made non-compliant just because there is a code put in place. The two motions that I believe should be considered are on the bottom of that sheet. The first one, of course, is 1) That you move to set aside the Administrators Interpretation and apply the agricultural exemption to the property at 1321 W 87th South. And that is the yes answer to the first yes no/question. The second yes/no question is, I am requesting a motion, if you get through the first question with a no answer then 2) You move to set aside the administrative interpretation based on historical use of the property. Where the codes transitional provision of "Non-conformities created by adoption of this code" applies and therefore the non-conforming use is allowable. Questions?

WILEY: One thing I would ask, would you take your pictures and perhaps mark them and perhaps date them on the back.

TIDEMAN: Number them 1-7 if you would.

WILEY: I would like to ask of everyone that speaks, there is a sign-in sheet by the door as you exit if you would please sign that. We want addresses, as well, before you leave.

WILEY: Any questions? I would like to ask you. One, you spoke of the inoperable related farm equipment. The vehicles that you showed us. There is two automobiles and one pick-up truck?

SHELINBARGER: I think there are one, two, three, four, five inoperable vehicles on the property.

WILEY: They are all automobiles? That are inoperable?

SHELINBARGER: The pick-up.

WILEY: The pick-up and four?

SHELINBARGER: There is a pick-up truck and there are four automobiles and one pick-up truck on the property. Kinda to give you an idea let's just assume that a vehicle, the car is 8 foot wide and 25 foot long and it takes up 200 square foot of space, 8 times 25 times 5 is 1,000. Two acres is 86,000 square feet of property. I am saying

let's back away and somewhat approach this reasonably. It is very easy to focus on what is ugly. I do not think this property has been maintained in a fashion that has been objectionable to the surrounding parties. That remains to be seen if there are people who have shown to speak in the public portion in this hearing. I have numbered these picture.

WILEY: If you would just leave them with Mr. Yearout. Is that what we want to do?

SHELINBARGER: Should they be identified like COBZA case?

WILEY: No. David can add that at a later time. Like indicated on the adjoining property. We have some horses, I do know what you are talking about in such a short time they become a dry lot in a hurry. Right across the street, I am not positive of the address it must be 8849 or thereabouts South Exposition. Just this spring I believe there was a notice issued by Mr. Wiltse, to clean that property up. There was a lot of inoperable vehicles at that location as well as many other things. I know they have made an effort to try to clean this area up. It has made a big difference. Your contention is that these automobiles have been there since prior to the zoning of this 1985. Or are these something that have been moved in at a later date?

SHELINBARGER: Certainly, prior to 1985.

WILEY: Ok. All of them?

SHELINBARGER: Yes.

WILEY: Any other questions of the applicant?

SHELINBARGER: I would like to ask. It is very easy to bring a esthetics into the area. What I am asking you, look strictly at what the code says. I think that is the primary focus, that should be brought to bare on this. If the pocession of vehicles is, if the existence of vehicles in the unincorporated area of the county is contra-band. If it is on agricultural property it should not be addressed with the zoning code. How far would this go? Do you really want to focus resources from the county on every iron pile that is out behind someone's barn in the county? I am not sure what the intent of the code was. I think there is certainly a lot of activity out in that area that has taken that position. Some of the people in that area had an equivalent case to this but are not aware of any other provisions of the code.

WILEY: Audience anyone here that would want to speak in favor of this case first?

SHELINBARGER: Could I get a reading on sequence of events. How this meeting or hearing is conducted?

WILEY: What we will do is listen to the applicant. Any other people who want to speak in favor. Then I would like to listen to Mr. Wiltse or any of his staff and then anyone else in the neighborhood that might be here to speak in opposition.

SHELINBARGER: That is the sequence?

WILEY: Yes. Anyone here that wants to speak in favor of this request?

JOHN HOBBS: 266 West 54th South, I would like to acknowledge that this property has been used for agricultural purposes. It did have horses, cattle, it has had goats, and these were used and grazed and grain feed. It has had activity through the years that this property has existed. I lived on the current property at 1319 W 87th South which is next door to that property. From 1975 to 1981. I was aware of what was going on then. I have seen since at time different activities that would relate to agricultural purposes.

WILEY: Thank you. Mr. Wiltse, would you like to speak?

GLENN WILTSE, SEDGWICK COUNTY CODE ENFORCEMENT ADMINISTRATOR: I am going to hand you the pictures and some information so you can be looking at it while I am speaking if you would like. What I have handed you are pictures of what we are classifying as inoperable vehicles. We are dealing directly with the cars and the pick-up and some of the other stuff right there. We are not actually discussing the tractors or whatever is within the buildings themselves. Because they are out of sight. We do not know what is in them. We have not went through the buildings and that is not are actual intent. The initial complaint not only on this property but many other properties in the area, was the inoperable vehicles. So that is what we are actually dealing with. To start with. One of the first things within the Wichita-Sedgwick County Unified Zoning Code each zoning district gives a list of allowed uses. And inoperable vehicles is not allowed in rural residential or anywhere within Sedgwick County. Unless within a specified zoning area such as salvage yards, vehicles storage facilities that are properly zoned. That is one of our big issues with this. Is that even if it was prior to the 1985 Sedgwick County Zoning of this entire area out there, inoperable vehicles are not allowed in that area. The agricultural exemption, I feel, the intent was to give the farmers the allowance of farming their land as they normally would. Which would allow them the cattle, tractors, equipment, if they created dust those types of things, this exemptions, allows them to actually operate the business as the land was meant to be used but never, to be used as a vehicle storage yard in any case. Basically, agricultural exemption applies for farmland and say like the tractors, if there is cattle there, the cattle are not a problem, in this case. But at no time when our inspectors were there did we see, I do not believe, the grazing of goats or cattle, horses or animals. I can not attest to the fence and those type of things that he has discussed. I do have my Zoning Inspector Mr. Joe Bloesing here who has visited the site, and he is the one who has taken the pictures and those type of things. Also, I would like for

Michelle Daise our legal counsel, she may have some additional comments at this time. Do you have any other questions?

WILEY: Any other questions of Mr. Wiltse. Agriculture uses are permitted on any zoning district in the county is that correct?

WILTSE: Pretty much.

WILEY: So there really is no real exemption to agriculture uses in the county in that respect?

WILTSE: If it truly is an agriculture use. They are farming.

WILEY: With the exception of hogs. That is a health department requirement. Are we talking only the inoperable vehicles. Or the plows, mower decks, this type of thing.

WILTSE: I do not think we have anything on the plows, mower decks, there maybe.

WILEY: The pictures I saw were strictly automobiles and something that looked like a pick-up.

WILTSE: A pick-up bed is part of an automobile. It's what we considered, it is classified that way under state law also. Truck beds those types of things. Anything its original intent was used for a vehicle or parts manufactured for a vehicle falls under the inoperable vehicle and the parts in the salvage type stuff.

BLOESING: I am the person who received a complaint on the property. This was not the only property in that area. We had about 24 complaints on properties within about a half of mile square of where this property is located at. The photographs. One of the questions I heard was that inoperable vehicles was the citation, violations that we cited for was the inoperable vehicles, the commercial vehicles, and the vehicles parts. The commercial vehicles being the dump truck bed that is stacked on top of some railroad ties. When I went out to photograph. We sent letters out notifying of the violations on the property. Then when the citation was issued was when the photographs you have in front of you that is when those were taken. That was the complaint and that was how we got into that entire area down there. If anyone has any questions.

CHANGED TAPES

DAISE: There was no evidence of current agriculture use on this property. The zoning code refers to agricultural use. There is not any evidence and it is the applicant's burden of proof, here to show that there is a agriculture use there. He has not presented any evidence showing that there actually is a current agricultural use. He may say that there has been historical use. But he has not proven a current use. Even

if he had proven that there is agricultural use taken place on that property, which our contention is that he has not, but even he had proven that. The way the zoning code is written, toward that it says "This code should not apply to use of land for agriculture purposes." Our position on this is that those inoperable vehicles that you are seeing in both sets of picture that you have there has nothing to do agricultural purpose. So even if the rest of the property was being used for raising crops, having grazing, horses, cows, whatever you would have on that property the inoperable vehicles are not for an agricultural purpose as outlined by the zoning code and as outlined by case law put though the Kansas Supreme Court. So it is very important to note that even if he had proven the first point, which its our contention is that he has not proven there is agricultural use out there the inoperable vehicles do not met that test, therefore, they are not allowed on his property. You have heard Mr. Wiltse explained that inoperable vehicles are not allowed anywhere in the county, unless someone has a current and valid salvage license. There has been no evidence that he has that salvage license. Therefore, he can not have those inoperable vehicles on that property. Mr. Shelinbarger has also indicated that the zoning code can not create non-conformity. What he was stating that no non-conformity created by the adoption of this code. He read a segment to you that says "No use of a building or property that complied with the zoning ordinances and resolution shall be deemed to be non-conformity." That is the key right there. None of what has been taking place with these inoperable vehicles ever complied with the laws at the time these zoning laws went into effect. It has always been required to have a salvage license in order to have inoperable vehicles stored on a property or to have vehicles parts stored on a property. So at no time did his property comply to the laws when this zoning code went into effect. These zoning laws going into effect did not create a non- conformiity on his property. They were already in non-conformity. He also talked about the non-conformities, he also talks about the continual use he has used it throughout history, he and his father did different things on this property. If you will note in the zoning code, in Article 7 it talks about non-conforming uses. He is right the code can not create a non-conforming use but if someone has a non-conforming use when the zoning laws come into effect, but they cease that use for a certain period of time, they lose that non-conforming status. You have probably heard about grand-fathering and that, if someone quits using the use that was grandfathered in, they no longer grand-fathered and that is a general term and probably the better term for it is a non-conformity. In Article 7, Section G 2 E, it talks about the property at the land use conducted primary outside of the building which is what is taking place here. His contention of agricultural use and also the inoperable storage, says that if it has been vacant of completely inactivity for 12 months. There has been no evidence presented by Mr. Shelinbarger, or anyone in support of him indicating that there has been any agriculture use or any other type of use that would be considered a non-conforming legal use within the last 12 months. He also indicated that his land is grazing land. But there is not any indication that the grazing land is being used for grazing. He simply indicated that it is grazing land. One other point that he made was that he had this property since the 1970's and none of this has been enforced against him in the last 20 years until now. As I am sure that you are aware, a lack of enforcement in the past does not preclude us from enforcing the laws at this

time. Just in summary, I want to urge you to recognize that what has taken place on this property is not agriculture use. There is not agricultural use going on in any location but specifically in the areas where the inoperable vehicles are being stored. They are not being used for any other type of agriculture use. The storage of agricultural equipment, we would also contend that is not an agricultural use. It is simply storage, it is not being used for any type of agricultural activity on that property. We would ask that you uphold the determination of Mr. Wiltse as Zoning Director.

WILEY: Any questions of Michelle?

ALL: No.

WILEY: Is there anybody here that would like to speak in opposition? Seeing none I would like to bring it back to the bench then. What is your pleasure?

BAUER: I move that the Board recess for executive session to discuss the evidence submitted in case number COBZA 5-98 Appeal of the decision of the Zoning Administrators and to deliberate that decision and that the Board return to open session no sooner than 4:45 p.m. on February 2, 1999.

TIDEMAN: Should be February 1, 1999.

BAUER: You are right. February 1, 1999.

TIDEMAN: I second.

MOTION PASSED 4-0.

WILEY: Reconvene at 4:46 p.m. The hearing. Mr. Shelinbarger may I ask you a question? Have you registered as a non-conforming use in accordance with Section 7 -I of the zoning code? On page 212?

SHELINBARGER: The answer to your question is no I have not.

WILEY: That is all I needed to know sir. Any other questions. Entertain a motion.

BAUER: I will make the motion to uphold the decision of the County Zoning Administrator. The findings will be articulated in the resolution.

TIDEMAN: Seconded the motion.

WILEY: I have a motion and a second.

MOTION CARRIED UNANIMOUSLY 4-0.

WILEY: Dave, we are ready for COBZA 6-98.

YEAROUT: Mr. Chairmen, I would note that we would attempt to have that resolution prepared and signed for distribution within a week.

WILEY: And we will forward a copy of that to the applicant Mr. Shelinbarger.

YEAROUT: Yes.

YEAROUT: Presented and reviewed Staff Report, COBZA 6-98.

WILEY: The sign would be permitted?

YEAROUT: This would accommodate the ability to have that sign. We felt it was important to at least address that within the body of the permit. This is standard of what has been done with other home occupations where a variance has been needed. You should have attached also the correspondence that they sent to Mr. Gooch in October 1998. A two page letter document, there is a fax date of December 11, 1998, that is item A through E their reasoning and rationale addressing the criteria required to be addressed by the applicant in making a variance request. The site drawing showing the property, the area of the fencing, the area of the wood storage and in time they intend to construct a 30 X 50 shed south of the homesite. This would be to accommodate and park the vehicles in. Right now there are no out buildings on the property and this will help to give an area that is protected from the elements. A separate letter then should be the last page that addresses the request to have the fencing be allowed to be constructed over a three year period. Because of the length we are talking a quarter of a mile. A wooden fence that long is not something they feel they can tackle in one particular year. This gives them the ability to address it, particularly in the area where the wood storage activity is most intensive. They would put the first fence in that area. That is the summary of the staff secretaries report.

WILEY: Questions of the staff?

TIDEMAN: Has there been signs posted on the property.

YEAROUT: The only correspondence has been by way of the applicants who have indicated a letter concerning the fence from the lady who adjoins and owns the mobile home park. But we have had no comments or questions from any of the other landowners in the area. There was notifications given by mail to other owners within a 1,000 foot radius and we still have heard nothing.

WILEY: Dave, I have a few questions. One, you are requiring the wood fence all the way to the north only because this is where the vehicles are parked? The storage

building is suppose to be there? Looks like the wood storage is going to be basically in the south half of the property.

YEAROUT: It is still visible from that property line.

WILEY: I drive by it every day and it is visible. With or without a fence there. I guess what I am saying is..

YEAROUT: I leave that to the Board's discretions. We are just being consistent in our recommendations addressing the fence line.

WILEY: There is no requirement for fencing on the south line then?

YEAROUT: No. It adjoins the drainage structure and is pretty heavily treed down there.

WILEY: Ok. The Riverside Sewer.

YEAROUT: Nobody was impacted from the south. The westside is obviously the turnpike. It is elevated because you are starting to rise to get over the overpass over 55th Street.

WILEY: Question of Staff? Would the applicant care to say anything?

KATHY JONES: I have a letter from Toni Young who owns the Trailer park next door.

WILEY: If you could please leave with Mr. Yearout.

JONES: That is all I have.

WILEY: Kathy, you have read the staff comments. And the requirements of the approval and your in agreement with those comments of approval?

JONES: Yes. We would prefer not to have to put a fence up of course.

WILEY: That is the only reason why I brought up the question. If the wood is going to be contained in the south half of that property. Why build nearly a 1300 foot fence?

JONES: Right, We agree but whatever we need to do.

MIKE JONES: We had originally intended to put a fence along that side to screen out the trailer park.

WILEY: So this is not a problem as long as it be done in a three year period.

MR. JONES: No. As long as we are allowed the three years. Yes sir, we will get it done.

YEAROUT: Did you catch what he said? To screen out their view of the trailer park.

ALL: Laughter.

WILEY: Question of the applicants? Thank you. Entertain a motion.

BAUER: I move that the five conditions set out in the section V.G. 6 in the Unified Zoning Code have as necessary for the granting of the variance have been found to exist. And the variance be granted subject to the conditions set out in the secretaries report.

WILEY: Are we talking just part 1 or part 1 and 2?

BAUER: Part one.

TIDEMAN: Seconded.

MOTION PASSED UNANIMOUSLY 4-0

BAUER: I move that the five conditions set out in the section V.G. 6 in the Unified Zoning Code have as necessary for the granting of the variance have been found to exist. And the variance be granted subject to the conditions set out in the secretaries report and that is Item 2.

TIDEMAN: Seconded again.

WILEY: Call the vote.

MOTION CARRIED UNANIMOUSLY 4-0.

YEAROUT: We will get the resolution to the applicant. The minutes were mailed out in the original packet during January and dealt with the August, September, and October meeting. All of those were the hearings involving the Caster appeal.

WILEY: Under other matters I would request a motion for the approval of the minutes of August, September, and October.

BAUER: I move to accept the minutes.

TIDEMAN: Seconded.

WILEY: Call the vote.

MOTION CARRIED UNANIMOUSLY 4-0.

Meeting adjourned at 5:05 p.m.